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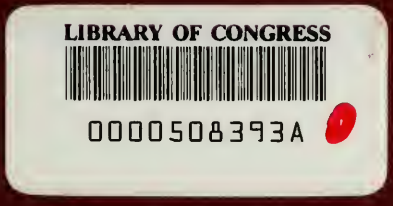

SPEECH

OF

MR. SCHENCK, OF OHIO,

ON THE

BILL TO REFUND GENERAL JACKSON'S FINE,

IN THE

HOUSE OF REPRESENTATIVES, JANUARY 8, 1844.

The bill to refund the fine imposed upon General Jackson in 1815 being under consideration in Committee of the Whole, Mr. SCHENCK addressed the Committee as follows:

Mr. CHAIRMAN: When I succeeded in obtaining the floor before the last adjournment of the House, it was with a desire, which you remember I expressed, to proceed at once and address the Committee such remarks as were then freshly suggested to my mind by the tone and character which this debate had so far assumed. There were some things that struck me as I listened to them—some novel, and I must be permitted to say, dangerous doctrines and propositions, in the speeches of gentlemen who have spoken on the other side of the Hall, which it seemed to me not difficult to answer and refute; and I felt confidence enough to seek the opportunity of encounter with such doctrines and propositions, even as the first occasion of my ever venturing to participate in discussion here. I feel now that I might better perhaps have left the undertaking to some one who would have had the advantage of more experience; for having yielded at that time to the interruption of delay, which seemed to be most agreeable to a majority of the members around me, and the excitement of the hour being gone by, I am afraid that I may find it difficult to regather the thoughts that suggested themselves as gentlemen were proceeding in their earnest and almost passionate appeals in favor of the passage of this bill. At any rate, I will only ask the attention of the Committee while I confine myself to reply. I do not mean to argue the merits of the bill, or the objections to it, at large. That has already been ably and sufficiently done—better far than I could hope to do it—by the honorable gentleman from New York, (Mr. BARNARD.)

I may be allowed, however, to premise the present state of the question. It is on the amendment offered by the gentleman from Georgia, (Mr. STEPHENS;) and I am glad that he has proposed such a test. It will compel every member to "define his position" in this matter.

It has been charged by the opponents of this bill that the great object to be accomplished by it—in fact, its leading purpose—is not so much to do justice to General Jackson as to cast reproach on the memory of Judge Hall, who imposed the fine that is to be refunded. And gentlemen who advocate the measure seem not to be entirely agreed among them-

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selves whether such is its design or not. Some avow that it is offered in that view; others, claiming to be equally its friends, deny every such unworthy motive as actuating them in its support. But I say the amendment of the gentleman from Georgia is a test, in the application of which there can be no mistake. The bill simply provides for refunding the fine, with interest. This amendment proposes that nothing in the act shall be construed to imply censure on the judge. How plain the question, then. The bill is either intended to stigmatize the memory of the judge or it is not. If it *is*, then gentlemen, to be consistent, must reject the amendment; for that, by robbing their action of its power to wound, would defeat their very object. If it *is not*, then gentlemen cannot consistently refuse to vote in favor of the amendment; for it does nothing more than clearly declare what they themselves approve. There is no middle ground between these propositions for any one to stand upon. All we ask of you is to say, in so many words, that you do not mean to assail and defame the memory of the dead. If you will not unite with us in declaring that, it must be because you do mean, and are resolved, as far as your solemn act of legislation can accomplish it, to brand disgrace upon the reputation of one whom his Maker has otherwise, perhaps fortunately for him, removed beyond your reach. There can be no other interpretation put upon your opposition to this amendment. It proposes to abate nothing from the justice to be done to General Jackson. All the grateful and kindly purposes designed in his behalf will remain. It does not surely need, that to honor him, another must be trampled upon. His friends will not assume—nay, no one upon this floor will do him the discredit to say—that his character can have no lustre, except as it is relieved and made to stand out upon the foreground in contrast with the fame of another, to be blackened and stained for his advantage. When gentlemen, then, so violently oppose the adoption of this amendment, I am bound to presume—nay, I can conclude nothing else fairly—but that this bill is intended more as an attack upon the dead Judge than for justice to the living General.

But if the face of the proceedings, and the plain action of the committee and of the House, should leave room to doubt whether there was any direct attack intended upon the memory of Judge Hall, that doubt would all have been removed by the course which some gentlemen have thought proper to pursue, and the avowals which they have openly made here, even in this debate. Every epithet of abuse that was at the command of those most prolific in terms of reproach, every contumely that could be heaped upon his devoted head—or rather piled upon his desecrated tomb—have been called into requisition to give force and pungency to the attack upon the officer of the law, whose greatest sin appears to have been that he dared fearlessly to do his duty under the most trying and difficult circumstacces. "British judge," "traitor," "tory," "coward," and so on, running down through the gamut scale of abuse, until it was thought even not beneath the dignity of the debate and the occasion to vilify him with the very choice epithet, "sneaking poltroon." And, to remove at last all question as to the true object of this bill, the gentleman from Illinois, (Mr. Douglass,) in the zeal of the onset, proclaimed that his only objection to it was, that it did not contain a clause expressly designed to condemn and brand the Judge. That gentleman, in his almost frantic heat, went still further, and declared that it was the good fortune of Judge Hall, more than his deserving that saved him from the infliction of Lynch law. Strange doc-

trine this, to be preached by one who is not only here now as a law-maker, but was recently himself a law-expounder. But more of that anon.

One word more on this point, Mr. Chairman. Perhaps I am doing injustice to the advocates of this bill not to cite a still higher authority—I mean as to the real object of the proposed amendment. When, in a former year, another branch of Congress had passed a bill to refund this fine, with the proviso that it was to imply no censure upon the deceased Judge, General Jackson himself, I believe, publicly expressed his determination to accept no act of relief accompanied by any such condition of justice to the character of the magistrate who had been the instrument of his punishment.

Now, then, let me follow gentlemen in their arguments, to see why this vindictive spirit is to be cherished towards Judge Hall, and this stigma cast upon his fame and memory.

It is a little strange that the first inquiry which presents itself in our way is imbodied in the question, *for what* was General Jackson fined? For no one who has listened only to the speeches of those who assume to be his exclusive friends on this floor would ever from them have gathered a correct answer to that simple preliminary question. Why, sir, if you take their version for history, Judge Hall sought to punish General Jackson because he had bravely fought the battle of New Orleans, and saved the country from an invading and insolent foe—because the General had gallantly defended the homes and the wives and daughters of that devoted city from the horrid desolation and brutal licentiousness with which they were threatened, and thus disappointed, gentlemen say, that "Federal judge," whose sympathies they suppose to have been all with the enemy. These, it is true, are not, by all the advocates of the bill before us, distinctly stated as the grounds of the fine; but the whole tone and course of argument, and all the fierce denunciations and unrestrained indignation poured out upon the case by the gentlemen from Indiana (Mr. KENNEDY) and my two colleagues, (Messrs. DEAN and WELLER,) assume that such, and no other, was the extent of General Jackson's offending. The gentleman from Illinois, (Mr. DOUGLASS,) however, less equivocal than others, has made a distinct and specific statement of the offence. He has said, in so many words, that General Jackson was fined "because he declared martial law;" and thereupon he labors to prove that he was justified and right, under the circumstances and necessity of his situation, in putting New Orleans under that strict military rule.

Sir, I will not permit myself to be drawn off into the question of the legality or constitutionality of such declaration of martial law It has been met and ably argued by the gentleman from New York, (Mr. BARNARD;) and if it had not, it is altogether collateral matter. That is not the true question before us. It is a false issue. I care not, for the purposes of this inquiry, whether martial law there was proper or not, legal or not, constitutional or not. General Jackson was not fined for declaring martial law; much less for making that glorious and successful defence which has ranked him high among the greatest captains of the age. He was fined for a contempt of court, for obstruction to the due authority of one of the highest civil tribunals of the country; and fined only, in all probability, because he obstinately refused to make any regular and proper defence to the judicial proceeding instituted against him. If he had consented to make that defence, to make it in proper form, and under the rules of the

court, as he was plainly advised by the court itself that it might be made, it is very certain that no punishment would have been inflicted. But he refused to do it. Before we look, however, at the necessary, the inevitable legal consequences involved in that refusal, let us review briefly the facts which history furnishes us in relation to this matter. They can be very succinctly stated. Dates are important, and I beg gentlemen to note and remember them.

On the 15*th day of December*, 1814, General Jackson issued his proclamation declaring martial law.

On the 8*th of January* following, the battle of New Orleans was fought a few miles below that city, the enemy repulsed, and that glorious victory obtained which has consecrated *this day* in the annals of our country.

On the 19*th of January*, the British camp having been evacuated, and their troops and naval force withdrawn, General Jackson wrote to the Secretary of War "that he had little doubt the enemy's last exertions had been made in that quarter, at least for that season;" and added, "you will not think me too sanguine in the belief that *Louisiana is now clear of its enemy;*" and accordingly, on the 21*st*, the General returned with his triumphant army to New Orleans, where they were received with every demonstration of joy and every mark of honor and congratulation by the citizens, and their success celebrated with the highest festivity.

On the 18*th of February*, news was received, by the way of Jamaica, that a treaty of peace had been concluded by the American and British Commissioners at Ghent.

On the 3*d of March*, Mr. Louallier, a member of the Louisiana Legislature, and one who had been active in aid of the army, published in one of the newspapers at New Orleans a communication complaining of the harsh manner in which certain French subjects of that city had been treated by General Jackson.

On Sunday, the 5*th of March*, for this publication, Louallier was arrested by order of Jackson, and thrown into prison. He immediately applied by his counsel, in petition to Judge Hall, the United States District Judge, for a writ of habeas corpus. The Judge allowed the writ, as by every rule and obligation of law and duty he was bound to do; and especially required to do it, when he considered the fact that the Legislature of the State had refused, even when the enemy were threatening the city, to suspend, at the request of General Jackson, that writ, so sacred and cherished as among the dearest safeguards of personal liberty. On the evening of that *same day*, the Judge, having notified the General that such a writ had been awarded, was himself seized and imprisoned, by a party of sixty soldiers, sent under the General's order to his house, where they arrested him. By this violent and flagrant act, which took place during a term of the district court, the court, which had adjourned over from the 4th to the 7th of March, was prevented from continuing its session.

I will say nothing now of the subsequent arrest of the district attorney, Mr. Dick, because he dared to apply to another Judge for a writ of habeas corpus for the release of Judge Hall; nor of the order of the General to arrest also that other Judge, because he dared to decide that he would allow such a writ. I want to confine myself to those facts, with the dates of their occurrence, which bear more immediately on the true issue of this debate. Let us proceed with them.

On the *6th of March*, General Jackson received news of the ratification of peace at Washington ; and on the *same day* issued an order for a court martial to convene to try Mr. Louallier for his life !

On the *8th of March*, he disbanded the militia.

But Judge Hall was still kept in close confinement until the *11th of March*, when he was sent four miles out of the city, under a guard of soldiers, and discharged with indignity. On that day, also, Louallier had been tried, and was acquitted ; but General Jackson issued an order disapproving the decision of the court martial, and did not release him until the *16th of the month.*

The court of the District Judge did not meet again until the *22d of March.* Proceedings were then instituted in due form against General Jackson, for contempt and obstruction of its authority. A rule was issued against him to show cause why he should not be attached. He presented, through his counsel, a long paper in reply, but refused to receive or answer the interrogatories which the district attorney presented in the case, under the regular rules of the court ; thus defying again the authority and the judgment of the civil tribunal, and setting up his arbitrary will against the form of proceeding which the law provided. He was fined. Could it have been otherwise ? If he had consented to make any answers—if he had only replied, and shown that he had no purpose of contempt, the law would have been satisfied. But he would do neither. The question was not, then, whether he had a right to hold the country under martial law—whether his arrest of Louallier was lawful or not—whether military force and his will were to be substituted for all other rule ; it was only whether he designed a contempt of the judicial power. His friends, the advocates of this bill, have argued long and loud here about the completeness and strength of his defence—of the entire constitutionality of his proceeding—or at least of the overwhelming necessity under which he acted. Why did he not make that defence ? If it was so good and conclusive, his contumacy was the less excusable. But he refused ; and the law took its course. Judge Hall was but its humble instrument.

Thus then stood the case. Let us pause and consider the scene which it presented. On the one side, the law to be observed ; on the other, the defendant arraigned, who was resolved to disregard it. The Judge had no alternative. The General or the Court must triumph. Which shall it be ? If the Judge had succumbed ; if he had permitted his authority—no, not his, but the authority of the Constitution and the law which he represented—to be derided and defied, then indeed would he have deserved all of the execration with which gentlemen now so unjustly assail him. But even that yielding might have been in some degree, if not blameless, at least pardonable ; for here was no ordinary defendant to deal with, and no slight temptation to favor escape. A general, flushed with victory, the acknowledged saviour of the country from depredation, the idol of the people, backed by an excited soldiery, surrounded by enthusiastic thousands who were ready to do him homage, or to maintain his cause, right or wrong—such was the man that stood arraigned there before that court—before that Judge ; and, in the face of it all, that Judge dared to do his duty ! Sir, it was a great moral contest, and a heroic triumph—a triumph of the law, alike honorable to the brave Judge who vindicated the power of that law of which he was the minister, and to the brave soldier who magnanimously submitted to its requisitions, restraining even the temper of those who mur-

mured at, and would willingly have resisted, the indignity which they supposed had been done to the popular favorite. Well may it be said that they would rob General Jackson of one of the greenest leaves in the laurel of his fame who would now take from him the merit of that noble and manly submission to the law. It is easy for you, fair weather judges—for gentlemen like the member from Illinois, (Mr. DOUGLASS,) and my colleague, (Mr. DEAN,) who have served in such stations "in the piping times of peace," to talk flippantly of the duties so easily and rightly to be performed by those upon whom devolve the high responsibilities of the bench; but they have no experience of the strength required and the firmness to sustain an officer in his rectitude under such fearful odds. And they denounce Judge Hall, withal, as a coward. Yes, as a coward! A coward? Why, sir, I have been accustomed to think that cowards were made of far other stuff. I have understood true bravery as something different from what these gentlemen imagine it. Courage—what is it? The lion that fiercely rushes upon his prey has courage; but the man, the nobler animal, that looks that lion boldly in the eye and quells him in mid-career—him I call the hero. Sir, we had an exhibition of true moral courage, according to my understanding of that virtue, here in this Hall only a day or two ago, when the House was engaged in debate upon another and most exciting subject. It was when my friend from North Carolina, (Mr. CLINGMAN)—the honorable member will pardon me for thus making him serve as an illustration to my argument—when that gentleman stood up alone in his place, and boldly and manfully avowed, and, I will add, most ably and eloquently defended, his honest opinions in regard to the right of petition on the subject of slavery. He knew that those opinions would bring him in conflict with his colleagues, with all the Representatives from that quarter of the Union; he knew too well how very liable the declarations he made were to be seized upon and urged to his personal disadvantage among his constituency at home; but he dared, against all this, to maintain the honest convictions of his own judgment, and to do what he believed was right. That is what I call true courage. That makes the moral hero. And when such proof of this quality is conceded to Judge Hall, it will little avail to seek to brand him with the mean epithet of coward.

Mr. Chairman, there is another respect in which gentlemen seem studiously anxious to keep out of consideration the authentic history of the transaction in question. I will not presume that the advocates of the bill mean designedly to make a false impression upon the public mind as to any important matter of fact. But certainly I may say that there is a very unfortunate confusion in their chronology. Relying only on the speeches on that side of the question for information, a person sitting in that gallery must have gone away full of the belief that this odious Judge had traitorously obstructed the defence of New Orleans, and interfered with the power of the General in the very midst of the conflict of arms. Why, sir, if this harmless civilian had somehow contrived to spike the American cannon upon the battle field, he could not have been assailed with more uncompromising denunciation as an enemy to the country. The gentleman from Illinois (Mr. DOUGLASS) so wrought upon his imagination, or permitted his imagination so to work upon him, that he fancied he saw the General interrupted by the judgment of the court in the very moment when he was perilling his life to defend that court itself from the rude assaults of a murderous enemy. Hear

him on this subject—and, to avoid all mistake, I read from the fresh report of his speech which has just been put into my hand :

"He did not envy the feelings of that man that would get up and talk calmly and coolly, under such circumstances, about rules of court, and technicalities of proceeding, and the danger of example, when the city might be in flames and the utmost barbarity might be committed. What were rules of court but mere cobwebs, when they found an enemy with his cannon at the doors of their courts, and when they saw the flames encircling the cupola? Talk then about rules of court, and the formality of proceedings! The man that would do this would fiddle while the Capitol was burning." [Sensation.]

Yes, "sensation"—that is the word. Put in brackets, I suppose, to show that this "sensation" was no part of the speech itself, but only the comment of the Globe's reporter. Why, with what a fearful tragic picture the gentleman from Illinois was determined to terrify us all—including the ladies in the gallery! Quite a scene! But what a pity that this and other such scenes, got up for the embellishment of this debate, must all dissolve and fade away under the clear light of the facts. Now, those facts are, that all these proceedings, as between the Court and General Jackson, occurred, and this fine upon him was imposed, in a time of profound and perfect peace—nearly three months after the battle was fought—when there was no foot of an enemy upon our soil—when our citizens had returned to the quiet pursuits of life—and when civil rule had every where resumed, or ought to have resumed, its wholesome sway over the land.

Mr. Chairman, if gentlemen had looked a little more closely into the history of that period, they would have avoided another mistake. We have been reminded that this is the memorable eighth of January. To-day this bill is to be passed through the House. The resolution adopted this morning, to discharge the Committee of the Whole from its further consideration, when the hand upon that dial shall reach a certain hour now rapidly approaching, was too significant to be misunderstood. The majority have willed it. It has been decided on already in caucus, and nothing remains but to register the party edict here. We are to have the gag of the *previous question* applied; and no more debate, nor any amendment allowed. This is all to be in honor of the day; and then comes the jollification over the work to-night. It is all in the bill of fare. Now, sir, the mistake is this. When you were selecting an anniversary for "the deed"—when it was given out, as I have heard it all around this Hall, that the day which saw the wrong done was to be chosen above all other days in the year for its redress, the managers of the play should have appointed the 31st of March for their favorite's "benefit." There would have been some appropriateness in that date, which there is not at all in this. That was the day on which the fine was actually imposed. But no, sir, no; there has been no mistake. The selection of this day, with its patriotic associations, is but another part of that deceptive illusion to be practised on the public mind as to the time and circumstances under which the military and civil power came into conflict at New Orleans. Every thing must be perverted—even the calendar itself—to put Judge Hall in the wrong, and to justify General Jackson.

But, Mr. Chairman, I am willing, for one, if I may be permitted to have any voice in the matter, to compromise this difference; and in that view, let me make to you, and through you to "the party," another suggestion. As you seem not inclined to celebrate the exact day of the fining, but would probably not object to getting very near it, suppose, instead of taking the

31st of March, as I at first proposed, you delay your action upon this bill, and the attendant eating and drinking, until the *first of April.* I think I can intimate good reasons for such a change. It is well understood that all this ado about obtaining justice for Old Hickory has less relation to his interests than to the fortunes of a certain other gentleman, whose friends expect his *trading capital* to be somewhat increased by the political investment of this fine. Why not, then, postpone the passage of the bill to a date that would be so peculiarly significant of its intention? By that means, too, you would rid the occasion of all those painful memories of dangerous strife and warfare, associated in every mind with the annual return of *this day*, and which must be so disagreable to your leader. The people of this country generally now have ascertained that Mr. Van Buren did not actually fight the battle, at least not *that* battle; nor do I know that he was ever fined; but if he has been, it was probably not for any *martial* violence—for he has preferred always the *civil* practice and the arts of peace. Let it not be said, though, that he has not a heart to sympathize with one who has both fought and been fined; or that he is too proud to unite his fortune and reputation with such a personage. True it is, that his own desire has ever been for peace; but let me show you that in that consists his merit. If in 1812 we did unhappily get involved in difficulty with Great Britain, "thou can'st not say *he* did it." No, sir; Mr. Van Buren's discretion in opposing Mr. Madison, the war candidate for the Presidency, is proof that none of the responsibility of that hostility to the mother country should attach to him. Nor did he afterwards encourage or mingle in any of those rude scenes, at New Orleans or elsewhere, which, in the end, you see, led the more incautious Jackson into trouble. He was not there, wasting his great energies, and endangering his valuable life, on that fearful eighth of January; but, like a useful and considerate citizen, was to be found in the interior of his native State, secure from all unnecessary exposure, industriously engaged at practice in the county court, and diligently looking after the politics of his own and the neighboring townships. Wonderful man! Sir, no *small* inducement would have enticed him from those useful and patriotic labors, to that repulsive field of carnage. It is true, he might have been persuaded, when "gentle peace" was restored, to tear himself from the shades of his beloved Kinderhook, and visit New Orleans, and especially might he have hurried to that scene of action if advised of the judicial proceedings against the victorious General. Ah, sir, would he not then have stood firm at Jackson's side, as counsellor and friend, if the old General had but wished to *retain* him there; and would he not have bravely vindicated the course and conduct of the gallant chieftain—if not employed first on the other side? Mr. Chairman, I do not wonder that gentlemen get excited and warm with the subject, when they think of these great sacrifices that might have been made by their leader. But, sir, when I reflect upon the peculiar connexion of Mr. Van Buren with the scenes at New Orleans, and with this tribute of justice to the old hero, and of the way in which it is all expected by his friends to operate upon the public mind, I cannot forbear to urge upon you, instead of this 8th of January, the *first day of April* for your festivity.

But I wonder, Mr. Chairman, that one more scheme has not been thought of to give *eclat* to this celebration. Since it seems to be thought that the

incense of adulation will not be grateful to General Jackson unless it rises from the broken altar of another's fame, the offering might be made still more complete. Hunt out, I pray you, the tomb which covers the remains of Judge Hall, draw black lines around any inscription you may find upon it, write "expunged" across its face, and then send the instrument with which the deed has been done to be preserved among other memorials of the triumph of arbitrary will, and of obedient servility over all that we have been accustomed to regard as most sacred.

I am sorry, sir, that I cannot even award to General Jackson, in another respect, the credit for magnanimity which the gentleman from Illinois (Mr. Douglass) has claimed for him. That gentleman declares that "the moment the official news arrived that peace was declared—the moment the enemy retreated, the moment that danger ceased, and the necessity for the rigid exercise of his military authority ceased—he submitted to the civil tribunals." Sir, this is another specimen of the manner in which dates are disregarded; or else I must say that that gentleman's measure of time is by some very uncertain standard—his "moments" of exceeding long duration. Why, sir, we have already seen that all these difficulties with the civil authority transpired long after every hostile force had been withdrawn—when there remained no alarm to terrify, no danger to apprehend. But, forsooth, there was no "*official*" news of peace. Official news? Special pleading from a gentleman who, in the same breath, has proclaimed to us his scornful contempt for all "forms" and "*technicalities*," as "cobwebs fit only to be brushed away!" Does that gentleman not remember that, although owing to a mistake in enclosing a wrong despatch at Washington, the General did not get "official" notice of the peace until the 16th of March, yet he had full knowledge of it before, sufficient in his own judgment for every purpose. I do not allude now to the news from Ghent, received on the 18th of February, but to that intelligence which he had on the 6th of March from the Postmaster General, informing him of the ratification at Washington. It was so authentic that he immediately forwarded a copy to the officer commanding the British force off Mobile; so authentic, that two days afterwards he disbanded his own militia. Yes, sir, he could do without an army, but he could not yet relax his grasp upon the unoffending citizens who had displeased him by their obedience to the laws of the land and their vindication of its authority. They were still kept for days longer in loathsome durance, as common malefactors; and one of them but reluctantly and tardily released from prison, even after a military tribunal of the General's own appointment had tried and found him guiltless.

Mr. Chairman, all these perversions and glosses, doing violence to the truth of history, tend but to prove the weakness of the cause that has to resort to them for justification or apology.

Well, sir, what has been the next resort of the friends of this bill? Failing to find any thing in the merits of the transaction itself, and in the conduct of the Judge, which should warrant them in this cruel attempt to stigmatize his memory, they have sought for it in the person and character of the individual himself. I will not stop now to inquire what that has to do with the true question as to the judgment he rendered—of that I will speak hereafter. But what are these personal charges and objections; these with which, avoiding the real point, they seek to impeach, not a District

Judge of the United States, but the individual, Dominick A. Hall, who chanced to hold that office?

Judge Hall was an Englishman. So said the gentleman from Louisiana, (Mr. SLIDELL,) and the gentleman from Indiana (Mr. KENNEDY) and my colleague over the way (Mr. WELLER) have repeated and rung the changes upon that charge in every variety of expression: a "British expounder of the law"—"foreigner"—"unfit to administer justice to native-born Americans." Sir, I know that no man can glory more than I do in the name and title of an American. I am proud of my country, of its institutions, its history, and its people. It is to me, too, a source of sincerest gratification to remember that I stand here upon this floor, representing the very hearth-stone by which my existence began, and numbering among my constituency the associates of my boyhood. It was my fortune, indeed, to be born and brought up so far in the interior, that I am as little likely as any one to be subject to foreign influence, and perhaps for that reason all the more liable to entertain national partialities and to cherish national prejudices. Yet this denunciation of Judge Hall for his foreign birth has no effect upon me. I can look beyond that accident, to the man and the officer. It was a barbarian sentiment, in the infancy of language, that made "stranger" signify the same as "enemy." But such narrow illiberality can meet with little sympathy in this enlightened age and free country. Is it impossible that there can be any patriotism, or regard for law, except in the bosom of one who is a native to the soil? Is love of freedom and of free institutions to be found nowhere but within the circumscribed limits of these United States? Is the appreciation of liberty bounded by geographical lines? Sir, who helped to fight the battles of that Revolution which secured to our fathers, and to us, this glorious inheritance of which we boast? Do gentlemen remember in the history of our country such names as Lafayette, and Lee, and De Kalb, and Steuben, and Pulaski? There is hardly a State in Europe the blood of some of whose sons has not been shed in our behalf. A crime to be a foreigner? Let that be marked! There is a party in this country who have been always proclaiming that they alone are the true and peculiar friends of the emigrant who comes hither to seek an asylum and a better home—a party who have sought every where throughout the land, and continually, to make political capital by flattering and cajoling with professions of attachment every thing that disburdened Europe has cast upon our shores; who have pretended almost to set the naturalized citizen above the native born; whose universal arms of love and fraternity have been spread to enfold indiscriminately the good and the bad, stipulating only, as a return for all this superfluous affection, for their votes! But now here, even in the very halls of our National Legislature, when a different sentiment better suits their purpose, we have heard the organs and leading representatives of that same party declaring themselves as if no foreigner could possibly become a faithful citizen of the land, or attached to the principles of its Government. But Judge Hall was an Englishman, and therefore peculiarly odious. A British Judge, and therefore incapable of administering aright the law. Sir, have gentlemen no reverence for such names as Hale, and Coke, and Mansfield, and Eldon, and Blackstone, and a hundred others, the very progenitors of whatever makes this country freer than theirs—men that have illustrated by the light of their great minds the eternal prin-

ciples of liberty and right which have been imbodied in our written Constitutionson this side of the Atlantic? A native of Great Britain, and therefore no patriot! Let that not be asserted until the names of Sydney, and Hampden, and Raleigh, and Chatham, and Burke, have equally been forgotten. Is it a reproach to be a foreigner? Why, I remember well when it was claimed as a merit for General Jackson himself, whom gentlemen now cannot sufficiently glorify, that he barely escaped being an Irishman! But I should like to hear the gentleman from Indiana (Mr. KENNEDY) address his argument on this subject to his colleague there, (Mr. OWEN,) who sits near him, and who is a native of that same island of Great Britain. What does *he* think of the doctrine that a man can have no head or heart to maintain or sympathize with American institutions, unless he had the good fortune to derive his first existence here? Will any one do that gentleman the injustice to presume that he has no patriotism in his bosom, and is unfit to legislate here, because he was born in that old country, north of the Tweed? I would trust that the committee will be favored with the views of that honorable gentleman upon the merits of this imputation against Judge Hall. He would be very apt, I think, to answer his colleague and mine in the language of an old Scotch friend of mine, who summed up, as I thought, in a most happy retort, the whole argument on this subject. My friend, sir, was a stanch, good Whig—and none the less a patriot, you must admit, on that account. He was engaged in warm political discussion with a flippant young sprig of Democracy, just released from college, enjoying his new liberty and incipient manhood, priding himself upon being the happy son a then distinguished Senator, and fully persuaded that there was every reason why he should be upon the best possible terms with himself. Well, sir, the controversy grew warm. My friend, the Scotchman, stuck fast to the old-fashioned Whig doctrines which came in with the Constitution, and which were thought sound enough by such men as Washington and Madison; the smart young Democrat opposed to these the new lights of modern discovery, backed by the weight of his endorsement. But my young gentleman at last lost his temper—a sure sign that he was worsted in the debate; and, for lack of better argument—like some other young gentlemen not very far off—accused his opponent with being a foreigner. "You are not a native of the country, sir," said he, "and you can know nothing of our politics, and have no business to meddle with them, any how." This *any how* is a great word with us in the West, you know, Mr. Chairman. "Hoot, mon!" said the old Scotchman, "and is it that you rely on? You were born in the country *because you could na help yoursel;* but I came to it *from choice*, and *because I loved its institutions.*"

But the next reason urged against the judgment of Judge Hall was, that he was a coward, and never bore arms in defence of the country. I have already disposed, I think, of that charge. We have seen of what sort of stuff he was made, and how he bore himself under the hard test of true moral courage; though he may not have thought it necessary, or, if you please, had not the nerve, to abandon the more appropriate duties of his civil station to shoulder his musket and take his place in the ranks of the army.

This fine should be refunded, though, even at the expense of Judge Hall's memory, because, say gentlemen, he is dead now, and has left no one to be

affected by any stigma upon his character. Sir, is not that most magnanimous? *That* is beyond all doubt true courage! Because there runs none of the blood of that man now in the veins of any living human being that we know—because there is no one left who may be moved by the ties of kindred or affection to defend and resent this aspersion of his fame, the gentleman from Illinois (Mr. DOUGLASS) thinks that no harm can be done by a refusal to adopt the amendment which would relieve his conduct from censure!

[Mr. DOUGLASS interrupted, and asked permission to explain. He had not urged it as a reason why the Judge might be stigmatized. He had only said that he did not know that he had any friends.]

Mr. SCHENCK. Yes, yes, I understand. "Kick him, Bill, he has no friends." That was what one loafer said to another, when they were imposing upon a poor fellow whom God had left desolate, and with none to take his part. But, sir, I did not expect any such principle of action and attack to find a place in our deliberations here. Be it so, that this Judge, of whom I know nothing, except what I gather from the public records, has left neither name nor family behind, he shall none the less have my defence of his acts and reputation when they are assailed, because of his maintenance of the law. He is gone to his long home; and if alive, would probably have no political influence or popularity. No magic of a formidable name supports *him*, and finds in all his acts something too sacred for any thing but prostrate admiration and obedience. I advise gentlemen to reflect whether it may not be some disposition to pay homage to the living that induces them to do injustice to the dead.

But is it true that Judge Hall was in his lifetime, as has been intimated, a man of no good character, and unesteemed? Are gentlemen aware that he was twice, in 1802 and 1804, appointed by Mr. Jefferson to the highest judicial stations, and that he held such trust until he was invested by Mr. Madison with that office the functions of which he was discharging when he imposed the fine upon General Jackson? Did they—those great leaders of the early Democracy—whose names are so often invoked, but whose doctrines are so little regarded by the party that now assumes that title—did they cherish, with every mark of confidence and respect, and exalt to high dignities, a person who was incompetent, dishonest—a cowardly traitor? You must do discredit, sir, to more than Judge Hall, if those charges are to be sustained.

But what, after all, do these charges signify in relation to the true issue? What defence do they make for General Jackson, and what proof against the decision of the Judge? Let us try them in that light by practical illustration. An offender against the law, or one who is charged as such, is arraigned to answer. It matters not whether he be a general or only a corporal—of high or low degree. The law, in its wisdom and equity, happily for us in this country, knows no distinction of persons. "Sir," asks the Judge, "what have you to say in reply to this charge which has been made against you?" "I say you are a foreigner," replies the defendant. Overlooking, in its leniency, this outrage and impertinence, the court might repeat the question, "What have you to answer to this complaint?" "You are a coward," cries the culprit, "and I refuse to make any answer." "You have no friends, and there can be no justice in your judgments." Does that sound absurd? Would such pleas be received in the courts of Indiana and Illinois? The learned gentlemen from these

States, who have advanced them here, can tell us. I am sure that my colleagues will never venture to adopt them in their practice at home. Yet such, and no more, are some of the arguments with which Judge Hall and his decision have been gravely met, when you come to strip those arguments of their ornaments, and reduce them to their plain import.

Mr. Chairman, there is a graver and truer view to be taken of this subject. There is a principle of civil order and of safety involved, which it becomes us all not only to remember, but to vindicate. I care not who or what Judge Hall was as an individual. No matter what description of person he was, or what his private character. We are only to know that he was the minister of the law, and that in him was the representation of the power and the sacred majesty of the Constitution. Vile, then, though he had been, and unworthy of trust, yet contempt and disregard of his process, and of his order, when made and executed in the rightful pursuance of his authority, was disobedience, not to him, but to the whole power of the People, as imbodied in that law and Constitution. Sir, let us thank God that it is so. Let us pray that this principle of safety and protection to all our rights may never be substituted by the unregulated caprice and arbitrary will of any man or set of men. The very evils of our system may be borne with patience, when we reflect that they are in part perhaps the fruits of this good principle. Intelligent men, abroad and at home, have complained of the tyranny of public opinion here, and of the want of moral independence. It is the fault, I suppose, of a wise scheme and practice of Government, in which individuals are nothing and the constituted authorities of the country are every thing.

But, Mr. Chairman, these constituted authorities, and this system of Government, are not always respected even here, where they should meet with most consideration and regard. Not satisfied with the attacks upon Judge Hall on personal accounts, gentlemen, I am sorry to say, have sought to invalidate the weight of his judgment by making assault upon the whole judiciary of the country. Sir, no discussion, no party denunciation, ever gave me more pain than I felt to hear that important branch of our Government assailed, not only with terms of irreverence, but in a spirit of bitter hostility; and I could not have excused myself if I had remained quiet in my seat, without entering my solemn protest against such an attack upon that department. If there is any thing that ought to be held sacred, it is the judiciary of the country. In that we have a grave, high, solemn power, to which, in the last resort, and more than to all others, is intrusted the guardianship of life, and liberty, and reputation, and property—all that is dearest to men as members of civil society. In our Government it is the great check, the wholesome power of restraint, alike upon popular turbulence and official usurpation. Under God, I do believe that our highest obligations as citizens are due to its protection. It is the sheet anchor, without which we should be soon all adrift. The fathers of our country gave us the blessing of a written Constitution; but it has been the patient and laborious work of the supreme judiciary, charged with its construction, in the last resort, and devoted to its high study, removed from the influences of political passion and prejudice, to widen and strengthen its foundations, and sink them deep in the hearts and understanding of the people. The judges of our country and its courts all corrupt? Sir, I will believe this when I forget that such men as Marshall, and Jay, and Story, and Kent, to say nothing of my colleague (Mr. Dean)

and the gentleman from Illinois, (Mr. Douglass,) have consecrated their lives and their intellects and their great moral influence to the good and the happiness of my countrymen. On this very day the members of the highest judicial tribunal in the land are about assembling in another apartment of this Capitol; and if we are to entertain such sentiments as does the gentleman from Indiana, (Mr. Kennedy,) instead of imploring a blessing upon their labors, we ought to regard it as a meeting of traitorous conspirators, plotting for the betrayal of our liberties.

When the gentleman from Indiana (Mr. Kennedy) told us that his opportunities as a lawyer had enabled him to tell of corruption in the courts, I made every allowance for some possible "secret griefs," and trusted that he was mistaken in his observation; but when my colleague, (Mr. Dean,) who has himself filled an important judicial station, added the weight of his testimony, I was afraid that some one, not knowing him well, might conclude that he was giving the convictions of experience. No, sir, no; gentlemen have been carried away in the ardor of debate, and will not deliberately insist upon these indiscriminate charges against the judiciary.

[Mr. Kennedy and Mr. Dean explained. Mr. Kennedy insisted that he had not gone so far as was imputed; that he had only claimed that the judiciary was just as corrupt as any other department. Mr. Dean averred that he had not denounced the whole judiciary; he had marked out Judge Hall as an exception.]

Mr. Schenck. Well, sir, I am glad if I have mistaken the gentlemen. I desire not to misrepresent their arguments and assertions; though I have taken them up as I did understand them, and as others around me have understood them.

But to the gentleman from Indiana (Mr. Kennedy) again. He claims to testify in still another capacity. He says that he was a blacksmith before he became a lawyer. Well, suppose he was! Does he mean to claim that he represents the opinions of that industrious class of artisans, and that they would sanction disrespect of the character of the judiciary? Sir, it is not so. I know the mechanics of this country. There is not a more law-abiding class of citizens in the community than they. There is none that cherish a deeper respect and love for the free institutions of the land. It is their habitual reverence for order and right, their fidelity to the Constitution and the laws, which makes them what they are—influential and respected. Sir, I suspect that the gentleman has long since ceased to associate with that sober-minded and honest portion of our people, or he would better understand their sentiments and feelings. He has forgotten the business of the blacksmith in a calling which he finds more congenial to his taste. He has retained only so much knowledge of the trade as helps him to *hammer on the political anvil, and to blow the bellows of Democracy!*

And there, also, again, is the gentleman from Illinois, (Mr. Douglass.) He, too, has been a judge, I am told. He is, however, in some things, a strange expounder of the law, "Talk about illegality!" says he. "Talk about formalities!" Why, he expresses the most sovereign and scornful contempt for all such restraints upon the free action of his favorite General, for all "rules of judicial proceeding," and says they are no better than "cobwebs to be brushed away!" He cared not, he said—and I quote

the very language in which he has been reported—"he cared not whether General Jackson violated the Constitution or not. He cared not whether General Jackson suspended all civil authority or not." And then he proceeds to justify all his violence on the ground of necessity—that universal plea for tyrants. Such doctrines, Mr. Chairman, may do well enough for the meridian of St. Petersburg or Constantinople; but I take it they are rather startling to be asserted in this free country. Give currency and sanction to the doctrines which that gentleman has preached here, and you have only to say that when a commander of an army gets a commission in his pocket, every other authority, and all law in the land but his unbridled will, are utterly at an end. "Martial law is necessary to save all law." That, again, is another of that gentleman's legal propositions. Mr. Chairman, the remedy is a strong one, and reminds me of no other prescription of which I have ever heard, except in the practice said to have been adopted by a person once in another learned profession. It was by a quack doctor, one of your famous nostrum dealers, who was called upon by an anxious mother to administer something to her child that was sick with an ague, or some not very serious disease. He gave his medicine, and went off. The next day he returned to inquire after the little patient, and found the mother in great alarm and distress. "Ah, doctor," said she, "my poor babe has grown worse and worse ever since I gave the dose; and now I'm afraid he is dying in convulsions." "Bless your heart, madam," he exclaimed, "that was exactly what I wanted. The fact is, you see, I don't know much about the ager, but *I'm great on fits.*"

[Mr. SCHENK was here interrupted by the expiration of his hour. After some further discussion, the committee rose, reported the bill back at the hour resolved on, the previous question was called and sustained, the amendments, and all further debate cut off, and the bill was passed by the House and sent to the Senate.]

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